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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

JUL 15 1996

July 15, 1996

DOCKET FILE COPY ORIGINAL

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: CC Docket No. 96-128 (FCC 96-254)
In the Matter of Implementation of the Pay Telephone Reclassification and
Compensation Provision of the Telecommunications Act of 1996

Dear Sir or Madam:

Enclosed are the original and fifteen copies of the reply comments of Peoples Telephone Company, Inc. in the above-referenced proceeding. Please date-stamp one copy and return it via our courier to acknowledge receipt.

An electronic version on diskette and two additional written copies have been provided directly to the Common Carrier Bureau's Enforcement Division.

Respectfully submitted,



Michael S. Wroblewski

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUL 15 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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CC Docket No. 96-128

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Implementation of the

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Pay Telephone Reclassification

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and Compensation Provisions of the

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Telecommunications Act of 1996

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REPLY COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

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July 15, 1996

SUMMARY

Peoples Telephone Company focused its earlier comments on the two major financial issues that directly affect Peoples' ability to provide high-quality, reasonably-priced competitive payphone services: (1) the acute need for interim compensation, and (2) "fair" compensation for each and every completed call. For both issues, Peoples expended great effort to present a balanced and accurate picture of its payphone costs and calling volumes so that the Commission would have a sufficient record on which to order flat-rate interim compensation and a uniform, nationwide per call compensation rate or Station Access Fee ("SAFE") of \$0.45 for each and every completed call (including local coin calls) made from a payphone, in fulfillment of Section 276's mandate to ensure fair compensation. Indeed, the costs that Peoples submitted represent a very lean and efficient operation in which only costs identified with its payphone operations were included. Peoples, in these reply comments responds to the information presented, and positions taken by the other parties, of relevance to these two key financial issues. The record shows that Peoples' real world data remains the best source for the Commission to use in establishing a compensation system in this docket.

Peoples in these reply comments also responds to two additional issues, raised by the parties, of critical impact to the development of a fully competitive payphone service market. First, Peoples opposes suggestions that net book value is the appropriate basis on which to transfer LEC assets out of the rate base. Specifically, Peoples lends to the Commission the expertise in valuing payphone operations that it has acquired to ensure that a LEC's payphone assets, which Section 276 requires to be removed from the rate base, are not valued on a net book value basis. The market does not value payphone operations at net book value, and neither should the Commission. Second, it is vital, as a transitional measure to full

and effective competition in the payphone industry, for the Commission to require full structural separation as a precondition to RBOC interLATA PIC authority.

TABLE OF CONTENTS

I.	SUMMARY OF POSITION.....	1
II.	THE RECORD DEMONSTRATES THE NEED FOR THE COMMISSION TO ORDER IMMEDIATE INTERIM COMPENSATION FOR 800 SUBSCRIBER CALLS AND INCREASE CARRIER ACCESS CODE COMPENSATION TO REFLECT CURRENT CALL VOLUMES.....	3
III.	THE RECORD SUPPORTS ADOPTION OF A UNIFORM PER-CALL COMPENSATION MECHANISM FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED FROM PAYPHONES.....	10
A.	THE RECORD SUPPORTS A UNIFORM NATIONAL LOCAL COIN RATE AS PART OF A COMPREHENSIVE PER CALL COMPENSATION SYSTEM.....	11
B.	THE FLORIDA PUBLIC SERVICE COMMISSION’S “OPTION 4” IS A SENSIBLE AND BALANCED APPROACH TO ESTABLISHING A UNIFORM, NATIONWIDE LOCAL COIN RATE.....	14
C.	THE RECORD SUPPORTS A PER CALL COMPENSATION AMOUNT FOR ALL CALLS THAT PROVIDES PSPs WITH A REASONABLE RATE OF RETURN ON THEIR PAYPHONE OPERATIONS.....	16
D.	THE USE OF MARGINAL COSTS WILL NOT PROVIDE PSPs WITH FAIR COMPENSATION.....	17
IV.	THE COMMISSION SHOULD ADOPT A FAIR MARKET VALUE, RATHER THAN A NET BOOK VALUE, APPROACH WHEN TRANSFERRING LEC PAYPHONE ASSETS OUT OF THE RATE BASE.....	20
V.	THE COMMISSION SHOULD REQUIRE FULL STRUCTURAL SEPARATION AS A TRANSITIONAL MEASURE IF RBOCS CAN CHOOSE THEIR PAYPHONES’ PRIMARY INTEREXCHANGE CARRIER.....	22
VI.	CONCLUSION.....	23

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and Compensation Provisions of the)	
Telecommunications Act of 1996)	

REPLY COMMENTS OF PEOPLES TELEPHONE COMPANY, INC.

Peoples Telephone Company, Inc. submits these Reply Comments in response to the comments of the parties, as provided by the Commission's Notice of Proposed Rulemaking ("*Notice*"). These reply comments are proffered to assist the Commission in fulfilling its mandate to establish a comprehensive national regulatory structure for domestic public payphone telephone services and to implement the explicit Congressional directives contained in Section 276 of the Communications Act of 1934, as added by the Telecommunications Act of 1996 (the "1996 Act").

I. SUMMARY OF POSITION.

Peoples, the largest non-local exchange company ("non-LEC") PSP in the United States, focused its initial comments on two major financial issues that directly affect Peoples' ability to provide ongoing, high-quality and reasonably-priced competitive payphone services: (1) the acute need for interim compensation, and (2) "fair" compensation for each and every completed call. For both issues, Peoples expended great efforts to present a balanced and accurate picture of its payphone costs and calling volumes so that the Commission would have a sufficient, "real-world" record on which to order interim carrier

Reply Comments of Peoples Telephone Company
July 15, 1996

access code and subscriber 800 compensation. This data also forms the basis for establishing a comprehensive, standard and prospective nationwide per call payphone compensation charge of \$0.45 for each and every completed call made from a payphone to fulfill Section 276's mandate to ensure fair compensation "for each and every intrastate and interstate call." Indeed, the costs that Peoples submitted represent a very lean and efficient operation, in which only costs identified with its actual and prospective payphone operations are included. In these reply comments, Peoples responds to the information presented and positions taken by the other parties which are of relevance to these two key financial issues.

In addition, Peoples in these reply comments also responds to two additional issues raised by the initial commenting parties that affect the structure of a fully competitive payphone service market. First, Peoples lends to the Commission the expertise in valuing payphone operations that it has acquired to ensure that a LEC's payphone assets, which Section 276 requires to be removed from the rate base, are not valued on a "net book" value basis. The market does not value payphone operations at net book value, and neither should the Commission. Failing to capture fair market value deprives ratepayers and regulated operations of the benefits that should flow from their historical support for public communications services. Second, it is vital that, if the Commission permits Regional Bell Operating Companies ("RBOCs") and other LECs to select and contract for interLATA carriage from their payphones, the LECs operate their payphone services in a structurally separate subsidiary.

Peoples is filing these comments to respond directly to the issues of utmost importance to the Company. In addition, Peoples has joined the comments of the American

Reply Comments of Peoples Telephone Company
July 15, 1996

Public Communications Council and it endorses the comments of the Inmate Calling Services Providers Coalition.¹

II. THE RECORD DEMONSTRATES THE NEED FOR THE COMMISSION TO ORDER IMMEDIATE INTERIM COMPENSATION FOR 800 SUBSCRIBER CALLS AND INCREASE CARRIER ACCESS CODE COMPENSATION TO REFLECT CURRENT CALL VOLUMES.

In its comments, Peoples demonstrated the acute need for interim compensation for "1-800 subscriber" calls (*e.g.*, 1-800-FLOWERS) and increased flat-rate or per call compensation for "carrier access" calls (*e.g.*, 1-800/950/10XXX/etc. dialed to reach a local/intraLATA/interLATA carrier's network).² Nothing submitted in the record disputes Peoples' evidence of the extremely high volume of 800 subscriber and carrier access code calls for which PSPs do not receive compensation. Indeed, Peoples provided the Commission with detailed per payphone and per call cost information to demonstrate how the current incomplete system of compensation does not compensate PSPs for more than one-half of its non-coin calls.³

Contrary to the assertions of some of the Regional Bell Operating Companies ("RBOCs") and interexchange companies ("IXCs"), interim compensation is wise, administerable and legal.⁴ Indeed, Peoples commends BellSouth for its fair stance on this point, strongly supporting interim compensation, effective immediately, to place the payphone

¹ See Comments of the American Public Communications Council, filed July 1, 1996; Comments of the Inmate Calling Services Providers Coalition, filed July 1, 1996.

² See Comments of Peoples Telephone Company, Inc., filed July 1, 1996, at 6-12.

³ *Id.*

⁴ See Comments of the RBOC Coalition, filed July 1, 1996, at 19; Comments of Sprint Corp., filed July 1, 1996, at 25; Comments of AT&T, filed July 1, 1996, at 11.

Reply Comments of Peoples Telephone Company
July 15, 1996

industry on firmer financial ground -- even though this is not a benefit that BellSouth will receive directly.⁵

In the first instance, interim compensation is wise because it will (1) promote the continued deployment of payphone services to the benefit of the general public, and (2) limit PSP incentives to charge excessive rates for 0+ interstate calls or "cream-skim" locations. Indeed, interim compensation will facilitate PSPs' deployment of more advanced payphones with increased functionalities, in clean and working condition, in an increased number of locations -- all to the benefit of the general calling public.

In addition to these public interest benefits, there is no record to dispute that non-LEC PSPs have been waiting for some type of compensation for 800 subscriber calls since the Company began providing service over 10 years ago, and more recently, since Congress enacted the Telephone Operator Services Consumers Services Improvement Act of 1990,⁶ mandating the provision of open 1-800 and other code call access methodologies. Requiring PSPs to provide services for which they are not compensated clearly violates the spirit of TOCSIA, as was recognized by the District of Columbia Circuit's decision in *Florida Payphone*, which ordered the Commission in May, 1995 to "relook" at PSP compensation for originating 800 subscriber calls. In order to implement the compensation system required by the court, the Commission adopted a *Second Further Notice* in August 1995.⁷ Indeed, if it

⁵ See Comments of BellSouth Corporation, filed July 1, 1996, at 7.

⁶ 47 U.S.C. § 226 ("TOCSIA").

⁷ Second Further Notice of Proposed Rulemaking, *Policies and Rules Concerning Operator Service and Pay Telephone Compensation*, 10 FCC Rcd 11457, 11464-67 (1995) ("*Second Further Notice*").

Reply Comments of Peoples Telephone Company
July 15, 1996

were not for the passage of the 1996 Act, which led to the suspension of the proceedings under the *Second Further Notice*, the Commission would more than likely have completed the development of a compensation scheme for 1-800 subscriber calls by this time.

Instead, non-LEC PSPs, such as Peoples, have been experiencing a dramatic depletion of revenue sources related to the dwindling number of compensable non-coin call volumes. As demonstrated in Peoples' comments, nearly 50 percent of all the non-coin calls that are entitled to compensation are 1-800 subscriber calls, totaling nearly 3.5 million uncompensated calls per month across Peoples' base of over 38,000 payphones.⁸ Not only does this translate into millions of dollars of lost revenue every month, but it also plays a large role in the average per payphone monthly *loss* of \$27.32 that Peoples currently faces.⁹

Peoples and other non-LEC PSPs incur this loss not because they are poor businesspeople, but because they have been waiting for a rational regulatory/economic structure and fair compensation for 1-800 subscriber calls since 1990, when TOCSIA first mandated open access to such calls. Therefore, while GTE and Sprint are correct in their observation that payphone providers "furnish payphone services and equipment as a business operation, placing phones generally at those locations where they are likely to prove commercially viable and profitable,"¹⁰ they are absolutely wrong that "existing mechanisms will adequately compensate payphone providers for their costs" and that interim compensation

⁸ Peoples Telephone at 9.

⁹ *Id.* at 23.

¹⁰ See Comments of GTE Service Corp., filed July 2, 1996, at 4; Sprint at 18.

Reply Comments of Peoples Telephone Company
July 15, 1996

is unnecessary.¹¹ Peoples and other non-LEC PSPs have placed phones with the justified expectation that they would be compensated for services rendered in providing access to subscriber 800 calls. Indeed, according to the court in *Florida Payphone*, Peoples was justified in expecting compensation for these services in 1990. After the remand of *Florida Payphone* and the adoption of the *Second Further Notice* in 1995, Peoples was justified in expecting that compensation for these services would begin by approximately May 1996. The business decision made by Peoples and other non-LEC PSPs to continue to operate at a loss over the short-term while waiting for a permanent system to be implemented does not mean that the current compensation system adequately provides compensation for these services, nor should this be used as an excuse to continue denying reasonable compensation on an interim basis.

Interim compensation is administerable because it can be modeled after the existing flat-rate/per call carrier access code compensation system. The compensation can be collected and disbursed using the same methodologies with little or no difficulties. The Commission simply has to update the subscriber 800 and carrier access code volumes, based on calling data already in the public record, and apply Peoples' proposed \$0.45 per call rate, or such other rate it determines is appropriate to implement effective compensation for all relevant calls. In addition, interim compensation should serve to ease the timing and workload pressure facing the Commission in the proper implementation of the comprehensive per call compensation system required by Section 276. Proceeding in this fashion on an interim basis

¹¹ GTE at 10.

will put in place a solid, rational compensation mechanism pending establishment of the Commission's final regulations under Section 276.

A flat rate interim surrogate for subscriber 800 calls is particularly appropriate because carriers, like AT&T,¹² have stated that it will take time to implement per call tracking mechanisms for interstate subscriber 800 calls. Ordering a monthly, flat-rate per payphone based on call volumes submitted by APCC (average of 100 monthly 800 subscriber calls)¹³ and Peoples (average of 86 monthly 800 subscriber calls) is reasonable under the circumstances.¹⁴ In addition, because a typical Peoples payphone now completes on average 43 access code calls per month, the monthly carrier access code rate of \$6.00 per month, which was based on an average of 15 carrier access code calls per month, should be based on current call volumes and rate levels as well.

Consistent with this adjustment, the per call rate paid by AT&T and Sprint should be increased from \$0.25 to \$0.45 per call, in light of the actual costs and current cost surrogates incurred to originate these calls.¹⁵ This is consistent with the statutory mandate and

¹² AT&T at 6.

¹³ APCC at 6.

¹⁴ The Commission could use a rate of at least \$0.40 that the Commission determined five years ago to compensate PSPs adequately for carrier access code calls, and which was ratified by APCC in its comments in this proceeding. APCC at 38.

¹⁵ Although APCC previously accepted AT&T's and Sprint's requests for a \$0.25 per call rate for carrier access code compensation, this acceptance was given at a time when it was vital simply to move forward to a per-call compensation system and away from a flat-rate, per payphone system. APCC was clear then that the \$0.25 per call rate was too low; and in light of the increases in call volumes since then, the rate deficiency has only worsened.

Reply Comments of Peoples Telephone Company
July 15, 1996

the financial realities dictating that PSPs receive fair compensation for each and every completed call that originates from their payphones

As a practical matter, the Commission can issue a simple accounting notice informing carriers that they will have to pay interim compensation from the date of the *Notice*, although the actual first payment of the compensation may occur after the adoption of the Commission's rules in this proceeding -- as was the case when the Commission ordered the original monthly \$6.00 per payphone carrier access compensation amount.

Finally, interim compensation is legal. Indeed, both case law and "the law of the case" support interim compensation, effective as of the release date of the *Notice*. The Commission under its Section 4(i) authority to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions," has ample legal basis to order interim compensation from the *Notice* date. Although the RBOC Coalition correctly observed that retroactive rate adjustments are unlawful,¹⁶ there is an important and clear distinction between "retroactive" rate adjustments and "interim" rates, as are being contemplated here. A retroactive rate adjustment would impose a rate increase on calls made prior to issuance of any order or notice, and is rightfully prohibited by the "filed rate doctrine," which provides that only rates on file can be given effect and allows parties to make business decisions on the assumption that the rates they pay will not be retroactively increased.¹⁷ Notwithstanding this distinction, the

¹⁶ RBOC Coalition at 20 (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 n.8 (1981); *Arizona Grocery Co. v. Atchinson, Topeka & Santa Fe Ry.*, 284 U.S. 370, 390 (1932); *TRT Telecommunications Corp. v. FCC*, 857 F.2d 1535, 1547 (D.C. Cir. 1988).

¹⁷ See *TRT Telecommunications Corp.*, 857 F.2d at 1547.

filed rate doctrine is inapplicable here because (1) the compensation rates are not “tariffs,” and (2) the \$0.40 per call rate already is in place, the Commission only needs to apply the rate to new call volumes and call categories that should have been included in the first instance.

An “interim” compensation rate, on the other hand, is a forward-looking device. It would not affect calls for which the parties involved have already accounted prior to the issuance of the *Notice*, but rather would implement rates that will be charged on a prospective basis. The Commission has the authority to order interim measures, as noted in *United States v. Southwestern Cable Co.*,¹⁸ in which the Supreme Court found the Commission had the authority to take interim measures in the regulation of community antenna television systems. Relying on the broad authority granted under section 4(i), the Court explicitly held that orders granting interim relief “do not exceed the Commission’s authority.”¹⁹

In addition, the D.C. Circuit has on numerous occasions upheld interim measures ordered by the Commission. For example, in *MCI Telecommunications Corp. v. FCC*,²⁰ the D.C. Circuit upheld the Commission’s interim measures for regulating customer premises equipment (CPE), holding that the FCC had engaged in “reasoned decisionmaking” and therefore its decision was well within its discretionary powers and subject to deference from the

¹⁸ 392 U.S. 157 (1968).

¹⁹ *Id.* at 180.

²⁰ 750 F.2d 135 (D.C. Cir. 1984).

courts. The court noted: "Since the FCC could deregulate all CPE today, it is unreasonable to preclude the agency from avoiding hardships by denying it the power to phase-out regulations."²¹

That the Commission has the power to order immediate, interim updates to the existing compensation plan as evidenced by *Florida Payphone* and its authority under Section 4(i) cannot fairly be disputed. The Commission has already developed a substantial record in the *Notice* on which to base an order for interim compensation here. As a result, interim compensation, as described above, is properly and legally ordered from the date of the *Notice* (June 6, 1996). Those seeking a continued "free-ride" or a competitive advantage, cannot be permitted to carry the day on this issue -- a per call rate of \$0.40 is already established, the Commission only needs to update certain call volumes and the scope of compensable calls as mandated by *Florida Payphone*.

III. THE RECORD SUPPORTS ADOPTION OF A UNIFORM PER-CALL COMPENSATION MECHANISM FOR EACH AND EVERY COMPLETED INTRASTATE AND INTERSTATE CALL ORIGINATED FROM PAYPHONES.

There was a broad consensus among the commenting parties supporting the fundamental principal that all PSPs should receive "fair" compensation for "each and every completed intrastate and interstate call using their payphone."²² The parties, however, differed as to the exact amount of the compensation and the calls entitled to compensation. At the low end, the IXC's suggested a rate of \$0.0675 per call,²³ and at the high end, the RBOCs

²¹ *Id.* at 142. See also *Bell Atlantic Telephone Cos. v. FCC*, 79 F.3d 1195 (D.C. Cir. 1996); *Rural Telephone Coalition v. FCC*, 838 F.2d 1307 (D.C. Cir. 1988); *MCI Telecommunications Corp. v. FCC*, 712 F.2d 517 (D.C. Cir. 1983).

²² 47 U.S.C. § 276(b)(1)(A).

²³ Sprint at 23.

Reply Comments of Peoples Telephone Company
July 15, 1996

suggested a rate of \$0.90 per call.²⁴ Peoples urged the Commission to adopt a reasonable, compromise, SAFE charge of \$0.45 per call, assuming this included all calls (coin, 0+ and dial around calls); the SAFE charge would act as a cap on local rates and as a mandatory rate for non-coin calls.²⁵ This middle range was supported by APCC (\$0.40), CCI (\$0.40), the New Jersey Payphone Association (\$0.50) and the Illinois Public Telecommunications Association (\$0.55).²⁶ Moreover, Peoples was one of the few parties to provide real and verifiable cost information demonstrating the effect that various per call compensation amounts would have on its financial position. The Commission must carefully consider this information in carrying out Section 276's mandate

A. The Record Supports a Uniform National Local Coin Rate as Part of a Comprehensive Per Call Compensation System.

There is substantial support in the record for a uniform nationwide per call compensation amount. For example, AT&T suggested that "there is no reason why PSP compensation should vary based on the type of call."²⁷ In most cases, a payphone performs the same services in connection with every call because the payphone and associated access line perform identical functions, "regardless of whether the called party is across the street, the LATA, the country or the world."²⁸ Moreover, APCC demonstrated that the simplest and

²⁴ RBOC Coalition at 9-13.

²⁵ Peoples Telephone at 23

²⁶ APCC at 13; Comments of Communications Central, Inc., filed July 1, 1996, at 9; Comments of the New Jersey Payphone Association, filed July 1, 1996, at 8; Comments of the Illinois Public Telecommunications Association, filed July 1, 1996, at 6

²⁷ AT&T at 10.

²⁸ *Id.*

fairest approach to establishing the new compensation system was to review all the call categories together, not in isolation, and to prescribe "a uniform nationwide compensation rate for each class of call made from a payphone."²⁹ Such an approach is necessary to ensure that each type of call generates an appropriate contribution to total compensation and that one class of calls does not subsidize another class in the same manner in which interstate 0+ calls now subsidize nearly every other call made from a payphone.³⁰

Further, the New Jersey Payphone Association urged that a uniform national rate would ensure predictable revenue streams, so that PSPs can provide quality payphone services to the general public at reasonable prices.³¹ Indeed, numerous parties concluded that a uniform national rate would (1) provide a simple rate structure for callers; (2) help ensure that callers have the correct coins necessary to make a local call; and (3) ensure predictability for transient callers or travelers who are the predominant users of payphones.³²

²⁹ APCC at 9-12.

³⁰ The Commission's tentative conclusion that it should not prescribe compensation for certain types of calls, such as 0+ calls, is inconsistent with the 1996 Act and with the concept of a uniform nationwide payphone compensation amount. APCC demonstrated that because the current compensation plan does not result in compensation for over one-half of a PSPs non-coin calls, the system has built-in cross-subsidies where a PSPs' commissions for 0+ calls must be used to cross-subsidize under-compensated carrier access code calls and uncompensated 800 subscriber calls, which comprises of over 50 percent of a typical Peoples' payphone's non-coin call volume (a typical Peoples' payphone originates 129 carrier access code and 800 subscriber calls out of a total of 180 non-coin calls per month). With a new market structure that provides compensation for each and every call, commissions for 0+ calls will decrease and not provide fair compensation to PSPs to provide these calls. As a result, the Commission should prescribe a per call compensation rate, which compensates PSPs for their payphone equipment costs, for each and every intrastate and interstate call.

³¹ New Jersey Payphone Association at 8.

³² See Comments of Communications Central Inc., filed July 1, 1996, at 8; APCC at 13-16.

The need for a uniform, nationwide local coin rate or SAFE charge is especially important to fulfill the Commission's per call compensation system mandate. As Peoples' demonstrated in its comments, and which APCC confirmed with industry-wide data,³³ over 70 percent of the calls that a typical payphone originates are coin calls, more than six times the number of access code and O+ calls combined. In addition, there is no information in the record that disputes the fact that a very large share of a PSP's revenues are derived from local coin calls. Because of the high volume of coin calls and the overwhelming dependence of PSPs on the revenue derived from these calls, the Commission cannot completely fulfill its mandate under Section 276 unless a compensatory uniform local call rate is included in the compensation system.³⁴

There was little dispute among the commenting parties over the Commission's tentative conclusion "that PSPs should be compensated for their costs in originating the types of calls" entitled to compensation.³⁵ The dispute was over how to measure the costs for originating these calls. Peoples' approach has been to examine only those costs necessary to

³³ APCC at 5-7.

³⁴ A nationwide non-subsidized local coin rate is especially vital to PSPs like Peoples that give a good rate value to customers from its payphones. Peoples currently charges consumers AT&T's federally tariffed rates for substantially all of its O+ interstate services. As explained in Peoples' comments, these underlying rates do not fully compensate Peoples for the large volumes of calls that are originated from its payphones because these rates typically only have two elements: (1) the transmission element (call duration) and (2) the operator services element. These are the same two elements a customer would be charged if the call were placed from a residential or business telephone, rather than from a payphone. AT&T's O+ rates do not include an element for the use of the payphone equipment. As a result, Peoples and other PSPs are generally not being compensated for this vital service element if they use AT&T's rates.

³⁵ Notice at ¶ 38.

Reply Comments of Peoples Telephone Company
July 15, 1996

provide payphone service and to present a conservative picture of those costs.³⁶ And, contrary to Sprint's assertions, rates based on costs to provide payphone services will not produce windfall profits for PSPs.³⁷

Peoples' approach was endorsed by the RBOC Coalition as it suggested that local coin rates cover the costs of providing local coin calls and provide the PSP with a reasonable profit.³⁸ To this end, Peoples' provided conservative cost data that represents a typical non-LEC PSPs' costs. The costs were normalized to ensure that only the costs (including a reasonable return) of providing payphone services were included. In this data, Peoples demonstrated conclusively that the per call compensation rate ceiling of at least a \$0.45 per call rate would be required to meet these criteria. Indeed, establishing a uniform national rate, which is indexed for economic changes, is the most efficient, comprehensive and least regulatory means to fulfill Section 276's mandate of a uniform, federal per call compensation plan.

B. The Florida Public Service Commission's "Option 4" is a Sensible and Balanced Approach to Establishing A Uniform, Nationwide Local Coin Rate.

In the event that the Commission chooses not to set a uniform, national per call compensation rate for all calls (including local coin calls), the Florida Public Service Commission ("FPSC") has presented a sensible and viable alternative position that appears to

³⁶ Because Peoples' is a publicly-traded company, its financial records are available for the public to verify its suggested per call compensation rates

³⁷ Sprint at 5.

³⁸ RBOC Coalition at 22-23.

Reply Comments of Peoples Telephone Company
July 15, 1996

balance competing federal and state interests.³⁹ Under this plan, the Commission would set a nationwide local coin rate, but states could petition the Commission to demonstrate conclusively that local conditions warrant a different coin call cap or SAFE charge in that state. This option would alleviate the concerns that various state public utility commissions expressed about retaining control of areas of local concern, while providing much needed uniformity to public and private payphone providers.⁴⁰

The FPSC plan is also consistent with the Commission's approach in regulating commercial mobile radio services under Section 332(c)(3) of Communications Act.⁴¹ Section 332(c)(3) permits states to petition the Commission to regulate the rate for any commercial mobile service. The Commission evaluated these petitions on whether "market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory."⁴² The Commission could take the same approach here as well. If the Commission's uniform national rate failed to protect consumers adequately, a state could demonstrate to the Commission that local concerns require a different rate cap for that state. This approach also reduces the regulatory burdens on the industry by having those states with special concerns about a

³⁹ See Comments of Florida Public Service Commission, filed July 1, 1996, at 3; Comments of Florida Public Telecommunications Association, filed July 1, 1996, at 4. The FPSC is a leading state regulatory body in telecommunications and Peoples would like to commend it for taking a bold and forward-looking step that acknowledges the national concerns presented here.

⁴⁰ See e.g. Comments of New York State Department of Public Service, filed July 1, 1996, at 4; Comments of Public Utilities Commission of Ohio, filed July 1, 1996, at 3-5.

⁴¹ 47 U.S.C. § 332(c)(3).

⁴² *Id.* at § 332(c)(3)(i).

uniform national rate petition the Commission for a different local rate. It also removes the burden from multiple PSPs in each state to petition the Commission on numerous state regimes that will require the Commission to undertake additional parallel proceedings to resolve whether a state has established a fair rate.

C. The Record Supports a Per Call Compensation Amount for All Calls that Provides PSPs with a Reasonable Rate of Return on their Payphone Operations.

As mentioned above, the dispute over compensation focused on how to determine whether a PSP is compensated for its costs in originating calls eligible for compensation. As demonstrated conclusively in its comments, a mandatory per call compensation rate for non-coin calls of at least a \$0.45 per call rate would cover Peoples' costs. Further, Peoples' demonstrated that it would take at least a per call compensation rate of \$1.12 for non-coin calls in order for Peoples to earn a 10 percent rate of return if the current local coin rate structures were left intact. This corresponds with APCC's conclusion that the Commission must prescribe a substantially higher rate of compensation (*e.g.* \$0.80 per call) for coinless calls (*i.e.*, if the Commission fails to ensure that PSPs receive at least \$0.40 per call for coin calls).⁴³

Peoples does not dispute the range of compensation of \$.84 to \$.90 per call that the RBOC Coalition determined was appropriate for the cost-based surrogates identified by the Commission in the *Notice*, assuming there is no relief on the local level.⁴⁴ Although these surrogates provide an approximation of costs, the Commission is obligated under Section 276

⁴³ APCC at 31.

⁴⁴ RBOC Coalition at 9-13.

to establish a per call compensation system for each and every call. As a result, the Commission must examine different cost structures and cost-surrogates from LEC and non-LEC PSPs alike in order to determine appropriate uniform per call compensation rate levels.

D. The Use of Marginal Costs Will Not Provide PSPs with Fair Compensation.

At the low end of the spectrum, MCI's position suggesting that the appropriate non-coin call compensation rate is \$.083 per call strains credibility.⁴⁵ The Hatfield Study, on which MCI relies for its rate level, is a fundamentally flawed economic analysis upon which to base public policy decisions. Table 1 below compares the "costs" submitted by the Hatfield Study with those submitted by Peoples in its comments. The Hatfield Study costs shown in Table 1 have been converted to monthly costs to provide a comparable analysis.

Table 1
Comparison of Peoples' Costs and the Hatfield Study

<u>Cost Category (Monthly)</u>	<u>Peoples</u>	<u>Hatfield Study</u>	<u>Difference</u>
Direct Costs (Per Payphone):			
LEC Line Charges	\$60.35	\$26.69	\$33.66
Premises Owners Commissions	62.17	0.00	62.17
Field Svc. & Operation Costs	44.20	3.18	41.02
<u>Other Costs</u>	<u>10.38</u>	<u>0.00</u>	<u>10.38</u>
Total Direct Costs	\$177.10	\$29.87	\$147.23
Overhead (SG&A)	26.90	0.00	26.90
<u>Depreciation/Interest*</u>	<u>61.06</u>	<u>\$5.35</u>	<u>61.06</u>
Total Costs -- PreTax	\$265.06	\$35.22	\$229.84
Return on Assets	27.93	0.00	27.93
<u>Income Taxes</u>	<u>16.76</u>	<u>0.00</u>	<u>16.76</u>
Total Costs + Reasonable Return	\$309.75	\$35.22	\$274.53
Total Cost per Call**	\$0.46	\$0.08	\$0.38

* Only includes expense that relates to Peoples' payphone asset base. In the Hatfield Study, depreciation is calculated by using the capital expense figure of \$64.16 per year.

** Assumes an average monthly call volume of 665 calls from a Peoples' payphone.

⁴⁵ See MCI Comments, filed July 1, 1996, at 13

As an initial matter, contrary to MCI's assertion, New England Telephone Company's costs, which are the basis for the Hatfield Study, are inappropriate cost surrogates to determine a nationwide per call compensation rate. Indeed, it was for this very reason that Peoples submitted cost data in its comments that described the direct costs that any non-LEC faces in providing payphone service.

In addition to basing the costs on unrepresentative costs for the market as a whole, the Hatfield Study is flawed because it analyzes data that is not comparable or consistent. First, the payphone costs that were used were generated from a "dumb," coinless, indoor payphone -- the least expensive type of payphone to operate and certainly not representative of the payphones in operation by Peoples and other PSPs. It is illogical for PSPs to install coinless payphones because most payphone users use payphones for local coin calls and PSPs do not receive compensation for over one-half of the coinless calls placed from a payphone. Second, the line expense used by the Hatfield Study does not represent the line costs non-LECs like Peoples pay. Indeed, Peoples pays an average of \$60 per month, or \$720 annually, for line charges or over twice the rate of \$320 imputed to the New England Telephone in the Hatfield Study.⁴⁶ Third, it is illogical for the Hatfield Study to not include as an expense of providing payphone services the commissions that PSPs pay location owners in order to install payphones. These expenses are necessary because, if they were not paid, a PSP simply could not place a public payphone at that location. As a result of these errors, the Hatfield Study underestimates the monthly cost of placing a payphone in service by \$275. Fourth, when determining the per call cost of the payphone, the Hatfield Study uses a total

⁴⁶ Peoples Telephone at 21.

Reply Comments of Peoples Telephone Company
July 15, 1996

number of calls that includes sent-paid calls. This is contradictory if the payphone used is a coinless phone because it would not generate any sent-paid calls. As a result of these flaws, a PSPs' total expenses are grossly understated while the total number of calls is overstated, and results in a cost-per call that is too low. For these reasons, the Commission should dismiss MCI's suggested per call rate as without any grounding in sound economic analysis.

Moreover, MCI's and others' general comments that the costs of providing payphone service are "non-traffic sensitive" are mistaken.⁴⁷ As Peoples' demonstrated in its comments, direct costs including: (1) location owner commissions, and (2) the costs to maintain over 38,000 "smart" payphones, vary directly with the traffic volume levels. Indeed, field service and collection costs are heavily labor-intensive and do vary considerably with each payphone's usage patterns. These two direct elements comprise a large percentage of Peoples' total expenses to originate a completed local, 0+, or dial-around call.

MCI also cites the Commission's five-year old proposal of \$0.12 per call for the compensation rate for each access code call as a relevant ceiling to determine per call compensation in this proceeding.⁴⁸ The Commission, however, soundly rejected this proposal when it adopted the \$6.00 flat rate for carrier access code calls which was based on a per call amount of \$0.40 per call. Moreover, even MCI acknowledges, as do nearly all of the commenters,⁴⁹ that state-established rates for local coin calls are not appropriate surrogates for payphone compensation because they are set artificially low in light of the subsidies involved.

⁴⁷ MCI at 14.

⁴⁸ *Id.* at 13-14.

⁴⁹ RBOC Coalition at 16.

Yet at the same time, the \$0.12 rate was derived by starting with the state-established rate for an *average local payphone call* at that time. It is illogical, on the one hand, to contend that state-established rates are not an appropriate starting point, but on the other, to use a rate derived from a state-established rate as an appropriate basis on which to measure per call compensation. This reasoning is absurd and the Commission should reject it.

In addition to MCI's misleading analysis, CompTel urged the Commission to set the per call compensation amount to only recover the marginal costs that a PSP incurs as a result of the compensable call.⁵⁰ Similarly, AT&T urged the Commission that TSLRIC cost principles negate the need to review any specific PSP's historical costs.⁵¹ By using marginal costs or TSLRIC costs, PSPs will not be able to recover their total costs in providing payphone service. PSPs will be forced out of business because their revenue streams will not support the costs necessary to operate their payphone routes. As a result, both of these proposals cannot be deemed to provide "fair" compensation to PSPs.

IV. THE COMMISSION SHOULD ADOPT A FAIR MARKET VALUE, RATHER THAN A NET BOOK VALUE, APPROACH WHEN TRANSFERRING LEC PAYPHONE ASSETS OUT OF THE RATE BASE.

Of concern to Peoples is the Commission's proposal in the *Notice*, to which the RBOC Coalition agreed, that LECs should use a net book value approach to valuing assets that are being transferred out of the rate base, rather than using a fair market value approach.⁵² Peoples believes that based on its recent experience in acquiring various payphone routes it

⁵⁰ See Comments of Competitive Telecommunication Association, filed July 1, 1996, at 15.

⁵¹ AT&T at 10.

⁵² *Notice* at ¶ 49; RBOC Coalition at 27.